IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No. 539/2005

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : November 21 , 2006

Heard Mr. Deshmukh, Advocate for the appellant.

By this appeal, the appellant takes exception to the judgment and decree dated 30.1.2004 passed by District Judge, Wardha in Regular Civil Appeal No.14/1999 dismissing the appeal filed by the appellant-plaintiff against judgment and decree dated 6.8.1997 passed by Civil Judge, Jr. Dn. Hinganghat in Regular Civil Suit No.27/99 against respondent-defendant.

The above referred suit was filed against defendant for recovery of possession and mesne profits against defendant. The plaintiff claimed title to the suit property in view of partition entered

into between the plaintiff and Namdeo who expired on 25.2.1989. In the plaint, the plaintiff also claimed that he was only heir of the deceased Namdeo. The defendant claimed title by virtue of sale deed dated 15.4.1988 executed by Namdeo in his favour. The trial Court held that the defendant had title to the suit property and negatived the claim of the plaintiff on the ground that the plaintiff had not proved partition between him and Namdeo and secondly on the ground that since admittedly the property belonged to Namdeo there could not have been a partition between Namdeo and the plaintiff. The lower appellate Court concurred with the finding given by the trial Court and dismissed the appeal against the decree passed by the trial Court.

Mr. Deshmukh, learned Counsel for the appellant submitted that since the plaintiff was the only legal heir of Namdeo the plaintiff had title to the suit property and, therefore, the decrees passed by both

the Courts below are liable to be set aside. He further submitted that the execution of the sale deed dated 15.4.1988 by Namdeo in favour of the defendant has not been proved inasmuch as the defendant has not led any evidence to prove the execution of the said sale deed.

Having considered the submissions made by learned counsel and having perused judgments passed by both the Courts below, I find myself unable to agree with Mr. Deshmukh. The ground urged in the second appeal that the plaintiff being the only legal heir of Namdeo had title to the suit property has been raised for the first time in the second appeal. No issue has been framed by the trial Court neither such a ground has been raised in the lower appellate Court. Needless to mention that framing of an issue is an important step in the trial of the suit. By proper framing of issues, the parties are put on notice as to the case they have to meet in the suit. The appellant-plaintiff neither sought recasting

of issues in the trial Court nor took this ground in the memo of appeal before the lower appellate Court. That being the position, I am not inclined to accept the submission of Mr. Deshmukh that the plaintiff being the only legal heir of Namdeo is entitled to recovery of possession of the suit property. The plaintiff having not proved his title by way of partition deed which was the foundation on which he has filed the suit, the trial Court, as well as the lower appellate Court were perfectly justified in dismissing the suit filed by the plaintiff. Once the plaintiff has failed to prove his title, even if the argument of Mr. Deshmukh that the defendant has not proved his title is accepted, the same would not carry any weight. The same will not advance the case of the plaintiff because it is well settled that in a suit for recovery of possession the plaintiff has to prove his title. That being the position, I do not find any infirmity in the findings given by the Courts below. No substantial

question of law is involved in the appeal. Hence, the appeal is summarily rejected.

JUDGE

A.